EX PARTE OR LATE FILED

RECEIVED

FEB 1 7 2005

Federal Communications Commission
Office of Secretary

February 17, 2005

EX PARTE

Hand Delivery

ORIGINAL

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: **REDACTED -- FOR PUBLIC INSPECTION**
Applications for Consent to the Transfer of Control of Licenses and Authorizations from Nextel Communications, Inc. and its Subsidiaries to Sprint Corporation

WT Docket No. 05-63

Dear Ms. Dortch:

This letter provides notice for the public record that, on behalf of Sprint Corporation and Nextel Communications, Inc., undersigned counsel today transmitted to the Commission certain confidential material filed under seal and subject to the Protective Order adopted by the Wireless Telecommunications Bureau in the above-captioned proceeding.[1] Specifically, the document transmitted under seal is the unredacted version of Attachment B to the Application for Transfer of Control, labeled the "CRA Analysis," which was filed in redacted form by the Applicants on February 8, 2005. The confidential version of this submission is marked "Copying Prohibited" in accordance with paragraph 6 of Appendix A of the Protective Order.

The unredacted, confidential version of the filing is being hand delivered to you under separate cover, as well as to Louis Peraertz, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, as required by the Protective Order. The confidential version of the filing will be made available for public inspection

[1] *See Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Nextel Communications, Inc. and its Subsidiaries to Sprint Corporation*, WT Docket No. 05-63, *Order*, DA 05-423, ¶ 2 and Appendix A (Feb. 16, 2005) ("Protective Order").

No. of Copies rec'd 0+1
List ABCDE

pursuant to the terms of the Protective Order. Arrangements for inspection may be made by contacting the undersigned counsel for Sprint Corporation.

An original and one copy of this filing is submitted herewith in accordance with Section 1.1206(b) of the Commission's rules. Please do not hesitate to contact the undersigned should you have any questions regarding this submission.

Respectfully submitted,

A. Renée Callahan (MGJ)

A. Renée Callahan
LAWLER, METZGER, MILKMAN & KEENEY, LLC
2001 K Street, N.W., Suite 802
Washington, DC 20006
202-777-7700

Counsel for Nextel Communications, Inc.

Michael G. Jones

Michael G. Jones
WILLKIE FARR & GALLAGHER, LLP
1875 K Street, N.W.
Washington, D.C. 20006
202-303-1000

Counsel for Sprint Corporation

cc: Louis Peraertz

REDACTED - FOR PUBLIC INSPECTION

Attachment B

CRA Analysis

RECEIVED

FEB 1 7 2005

Federal Communications Commission
Office of Secretary

JOINT DECLARATION OF STANLEY M. BESEN, STEVEN C. SALOP AND JOHN R. WOODBURY

FEBRUARY 8, 2005

Stanley M. Besen
Vice President
Charles River Associates

Steven C. Salop
Professor of Economics and Law
Georgetown University Law Center

Senior Consultant
Charles River Associates

John R. Woodbury
Vice President
Charles River Associates

Table of Contents

List of Tables

I. Introduction and Qualifications

1. This Declaration, which has been prepared at the request of Sprint Corporation (Sprint) and Nextel Communications, Inc. (Nextel), contains our preliminary analysis of the competitive impact of their proposed merger. Our qualifications for conducting this analysis are as follows:[1]

2. Stanley M. Besen is a Vice President at Charles River Associates, Washington, D.C. Dr. Besen has served as a Brookings Economic Policy Fellow, Office of Telecommunications Policy, Executive Office of the President; Co-director, Network Inquiry Special Staff, Federal Communications Commission; Coeditor, RAND Journal of Economics; and a Senior Economist, RAND Corporation. He currently serves as a member of the editorial board of Economics of Innovation and New Technology. Dr. Besen has taught at Rice University, where he was the Allyn M. and Gladys R. Cline Professor of Economics and Finance, Columbia University, where he was the visiting Henley Professor of Law and Business, and the Georgetown University Law Center, where he was Visiting Professor of Law and Economics. Dr. Besen has published widely on telecommunications economics and policy, intellectual property, and the economics of standards, and has consulted to many companies in the telecommunications and information industries. He holds a Ph.D. in Economics from Yale University.

3. Steven C. Salop is Professor of Economics and Law at the Georgetown University Law Center and a Senior Consultant with Charles River Associates. He is the author of numerous articles on industrial organization economics, antitrust law and policy, and the economic analysis of law. His scholarly articles examine a variety of economic and legal issues involving mergers, joint ventures and partial ownership interests, network markets, exclusionary conduct, and coordinated behavior. Professor Salop has worked on numerous telecommunications matters involving telephony, television program supply and distribution, and the Internet. He has been a visiting professor at MIT and the University of

[1] Our resumes are contained in Appendix 1 to the Declaration.

Pennsylvania and was previously Associate Director for Special Projects, Bureau of Economics, Federal Trade Commission. He holds a Ph.D. in Economics from Yale University.

4. John R. Woodbury is a Vice President at Charles River Associates, Washington, D.C. Dr. Woodbury is an expert in the economics of antitrust and regulation and has provided expert testimony, litigation support, and economic consulting services to a large number of business clients, including many in the telecommunications industry. In addition to having been a Brookings Economics Policy Fellow, he has held the following senior positions: Associate Director, Bureau of Economics and Assistant Director, Bureau of Consumer Protection, Federal Trade Commission; Economics Division Chief, Common Carrier Bureau, Federal Communications Commission; and Research Vice President, National Cable Television Association. He currently serves on the editorial board of the Antitrust Source. He holds a Ph.D. in Economics from Washington University (St. Louis).

5. The provision of wireless telecommunications services in the United States is highly competitive and will remain so after the merger of Sprint and Nextel. Although the two companies have been aggressive and innovative competitors, they continue to be handicapped by their relative lateness to the market and their disadvantages relative to their Regional Bell Operating Company competitors. The merger will offset some of these competitive disadvantages and make the combined company a more formidable competitor to Verizon Wireless and Cingular Wireless LLC (Cingular). The merger will reduce network construction and operating costs and will permit Sprint Nextel to offer innovative wireless services more rapidly, to more subscribers, and at lower cost than otherwise would be the case. At the same time, our analysis indicates that rival wireless carriers will continue to have the incentives and the necessary resources – including spectrum resources – to expand the number of subscribers that they would serve if the merged entity were to attempt to raise prices. As a result, the market will retain

the ability to deter price increases by the merged firm. For this reason, and others, coordinated price increases would also be deterred.

6. The remainder of this Declaration is organized as follows. We first examine the efficiency benefits of the merger. We then turn to the analysis of potential competitive harms. We begin by applying the initial structural screens employed by the Commission in its evaluation of the Cingular-AT&T Wireless transaction. This analysis utilizes subscriber share data acquired by Sprint and Nextel from Telephia and spectrum holding data compiled by Sprint and Nextel.[2] As part of this analysis, we note that Sprint Nextel will have more pro-competitive pricing incentives than its ILEC-affiliated wireless competitors, who have the incentive to take into account the impact of their conduct on intermodal competition and wireline profits. Because of this, the Commission should apply its initial structural screens under somewhat more permissive standards than it used in its review of Cingular-AT&T Wireless. We then evaluate the potential for competitive harms arising from unilateral and coordinated effects on competition in the provision of mobile telephony services and intermodal competition.

7. Based on our preliminary analysis, we conclude that the merger between Nextel and Sprint will likely benefit consumers without reducing the intensity of wireless competition. The merger is likely to increase competition. The merger is unlikely to increase Sprint Nextel's unilateral incentives to raise prices or increase the likelihood of coordinated behavior among the remaining wireless carriers. The same significant constraints on anticompetitive behavior that currently exist will also deter

[2] Telephia tracks information regarding the mobile telecommunications industry, including market share data for mobile service operators in major U.S. markets. This information is commercially available, and Sprint and Nextel enabled us to use these data for the limited purpose of the instant merger application. Because this information is proprietary to Telephia, however, the actual market data are redacted in the public version of the application.

anticompetitive price increases after the merger. Moreover, the substantial efficiencies that will result from the merger are pro-competitive and will benefit wireless customers.

II. The Efficiency Benefits of the Merger

8. In its review of the acquisition of AT&T Wireless by Cingular Wireless, the Commission considered "whether the combination... {was} likely to generate verifiable, merger-specific public interest benefits." In its analysis, the Commission asked "whether the combined entity will be able, and is likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that could not be pursued but for the combination."[3]

9. The Commission went on to emphasize that "the claimed benefit must be transaction- or merger-specific." This means that the claimed benefit "must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects."[4] Finally, the Commission stated that it "will more likely find marginal cost reductions to be cognizable than reductions in fixed cost."[5]

10. The merger of Sprint and Nextel will result in significant efficiencies. These efficiencies will directly benefit the current retail customers of the two companies as well as customers that the two companies serve indirectly. The efficiencies also will make the merged firm a stronger competitor, so that the subscribers of other carriers will benefit as well.

11. Many of these efficiencies are merger-specific. They could not be achieved, or are less likely to be achieved, or would not be achieved as quickly, without the merger. In addition, many of

[3] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Licenses and Applications, Memorandum Opinion and Order,* 19 FCC Rcd 21522, ¶ 201 (2004) (hereinafter *Cingular-AT&T Wireless Order*).

[4] *Id.* ¶ 205.

[5] *Id.*

these efficiencies will reduce the marginal cost of serving subscribers or producing additional minutes of wireless service, and others will directly improve the quality of service received by wireless subscribers.

12. In this section, we discuss a number of the major efficiencies that Sprint and Nextel expect to achieve from the merger and explain why they are merger-specific and why they are likely to result in direct benefits to wireless subscribers. The efficiencies fall into the following major categories: (A) Improved Technology Development and Deployment; (B) Improved Network Coverage; (C) Cost Savings from Increasing the Proportion of "On-Network" Traffic; (D) Reduced Equipment Procurement Costs; (E) Reduced Backhaul Costs; and (F) Development of Services Using 2.5 GHz.

A. <u>Improved Technology Development and Deployment</u>

13. Because the merged entity will have a larger customer base than either of the merging firms, Sprint Nextel will undertake many types of investments, including investments in development and network deployment, which would be uneconomical for either Sprint or Nextel separately. Moreover, Sprint Nextel customers and competition will benefit in the near future from investments in new technologies and services that Sprint and Nextel have already undertaken, because each of the merging firms will be able to gain from investments that the other has already carried out. Although some of these benefits might be achievable through arrangements short of a merger – for example, through joint ventures or licensing arrangements – the ability to achieve them through these alternatives is likely to be more limited and realized more slowly, and the resulting benefits smaller, largely because of difficulties in structuring efficient teaming contracts or license arrangements between competing firms.

14. There are two general ways in which the merger will lead to these benefits. First, the merger permits Sprint and Nextel to avoid cost duplication. This clearly applies to new investments, but each of the merging parties also will benefit from avoiding the costs of duplicative development

activities. Second, many research and development efforts involve costs that are independent of the number of subscribers served. As a result of the merger, some of the projects that would have been uneconomical for either Sprint or Nextel to pursue separately due to high development costs would be economical for the combined firm. In addition, projects that would have been deferred until either Sprint or Nextel alone had gained a critical mass of customers can be pursued more quickly because Sprint Nextel will achieve that critical mass at an earlier date.

15. The most important example of these efficiencies is that the merger will permit the combined company to avoid the costs of independently developing and deploying nationwide next generation wireless networks. Nextel has not yet initiated construction of its network, while Sprint is in the process of deploying its CDMA EV-DO network. The merger will enable Sprint Nextel to enhance and expand the coverage of the CDMA network to serve customers who seek voice, high-performance push-to-talk features, and high-speed data performance. Sprint and Nextel estimate that they will save capital expenditures with a net present value of $4.8 billion after taking into account the necessary incremental investments in the CDMA network.[6]

16. In the absence of the merger, Sprint and Nextel would have had to continue to pursue separate development and deployment efforts. For example, Nextel had already planned to upgrade its network using either a version of the CDMA standard or another packet-switched mobile broadband technology. Sprint has already begun deploying EV-DO in a number of markets in its CDMA network. Both of these efforts would have permitted the carriers to offer new services to their subscribers. The merger will permit Sprint Nextel to offer more of these innovative services more quickly to more

[6] See Joint Declaration of Marc Montagner and Steve Nielsen for details on this and other estimates.

customers and at lower cost than would be the case if the merger did not occur.[7] In particular, Sprint Nextel will deploy CDMA EV-DO, including the more advanced EV-DO Rev. A, more rapidly and over a larger footprint than Sprint would have done on its own.

17. Sprint and Nextel have identified significant savings in technology development and deployment costs among the synergies that they expect from the merger. For example, many costs that Nextel would have had to incur to upgrade its network will be avoided as a result of the merger, since many of these costs have already been incurred by Sprint in connection with its effort to upgrade its own network. Similarly, Nextel has invested in a push-to-talk feature for CDMA by working with Qualcomm to develop QChat. Although some incremental costs will be incurred to add a high performance push-to-talk feature to the Sprint Nextel CDMA network and to provide a gateway to permit customers on the company's CDMA network to communicate through the push-to-talk feature with customers on the iDEN network, those development and deployment costs will be substantially smaller than those that the two companies would have incurred separately.

18. In addition to the efficiencies in network development and deployment, Sprint and Nextel also have identified efficiencies in their information technology and billing, customer care, and sales and marketing platforms. These include savings from avoiding duplication in the costs of developing and maintaining these platforms and savings because one of the merging parties can take advantage of improvements that have already been made by the other. These savings will reduce the costs of acquiring, retaining, and serving subscribers and will enable the merged firm to charge lower prices and

---

[7] For example, P.J. Howe, "A Tricky Marriage," *Boston Globe*, December 23, 2004, notes that "Nextel customers ...could get an offer for high-speed wireless service sooner than they otherwise would...." He then cites Nextel spokesman Russ Wilkerson as indicating "Soon after Sprint closes a merger with Nextel...the combined company would market to Nextel subscribers devices to offer wireless data connections for laptop computers over the Sprint network."

provide better service than could either of the merging companies on its own.[8] Sprint and Nextel have estimated that the net present value of the savings from these sources will be approximately $4.4 billion.

19. These benefits are merger-specific. Without the merger, it would take longer, and be more expensive, for Nextel to deploy a next generation network. Similarly, it would take longer, and be more expensive, for either Sprint or Nextel to achieve the same efficiencies that they can obtain by adopting superior information technology and billing, customer care, and sales and marketing platforms that the other has already developed. It also would be uneconomical for either Sprint or Nextel, on its own, to undertake certain new research and development projects, and to make certain new capital investments. Because Sprint and Nextel will be able to spread costs over a larger customer base than either company could individually, their incentives to invest in the development and deployment of new technologies and services will increase. As a result, the merged firm will be able to offer services that rely on superior, lower cost technologies.

20. Significantly, the same level of benefits cannot be achieved by the alternative of teaming arrangements short of merger, where Sprint and Nextel remain independent competitors. Teaming could, for example, involve arms-length exchanges of technology or a limited joint venture to achieve these goals. However, these alternatives would not lead to the same efficiencies.

21. Teaming would require Sprint and Nextel to agree on how to share the costs and benefits of their joint action. It also would require the parties to devise highly complex contracts to ensure that the scope of work for each party was well defined and to establish their respective financial commitments and other obligations. Finally, these contracts would have to be designed to facilitate efficient

[8] For example, an investment that either improves the quality of customer care, or reduces the incremental cost of providing care to a given customer, will reduce customer retention costs, and thus permit Sprint Nextel to lower the prices that it charges and give it the incentive to do so. An investment that lowers the incremental cost of billing a given customer has a similar effect.

information exchange and investment incentives without, at the same time, disclosing the trade secrets or intellectual property of either party. Otherwise the arrangements would be prone to attenuated incentives, free riding, and opportunistic behavior.

22. Such contracts are difficult to write, particularly where they involve R&D.[9] Virtually by definition, many key contingencies cannot be anticipated in contracts governing cooperative R&D activities among separate firms. In the end, any contract would be incomplete.[10] Moreover, even if all such contingencies could be anticipated, the resulting contract would have to be extraordinarily complex. Difficulties in crafting such contracts could lead the parties to delay or even abandon any attempt to cooperate. The proposed, but unconsummated, Broadband Radio Service (BRS) joint venture between Sprint and Nextel, discussed in more detail below, provides a good example of these difficulties.

23. Even where joint ventures or similar arrangements are pursued, there can be serious disputes between the parties. These disputes, in turn, can result in delays in product development or delivery and increased costs to customers. Thus, teaming arrangements cannot replicate the benefits of merger.

[9] As Scott Masten notes, "{B}ecause contingent performance is costly to stipulate and even more difficult for courts to administer, contracts typically contain few provisions and, as a result, tend to be inflexible mechanisms for governing exchange. The greater the complexity of the transaction and the level of uncertainty associated with it, the greater the likelihood of being bound to an inappropriate action, and hence the greater the implicit costs of contractual organization." *See* Scott E. Masten, "The Organization of Production: Evidence from the Aerospace Industry", Chapter 10 in Scott E. Masten, ed.: *Case Studies in Contracting and Organization* (New York: Oxford University Press, 1996); reprinted from *Journal of Law & Economics*, vol. 27 (October 1984), p. 190.

[10] For a more general discussion of the difficulties of creating optimal incentives to undertake specialized investments in the context of sequential contracts among contracting parties, see Oliver E. Williamson, *Markets and Hierarchies: Analysis and Antitrust Implications* (New York: Free Press, 1976), p. 94.

24. For example, suppose that Sprint and Nextel were to contract to permit Nextel customers to have access to a CDMA network more quickly by sharing Sprint's network and investing jointly to expand and upgrade that network. Such a venture would require Sprint and Nextel to share investment costs according to some formula. This formula would be difficult to negotiate because it would require the parties to agree about their relative benefits. Moreover, a formula that allocated network costs according to the parties' relative usage could have the effect of discouraging each from lowering its price in order to expand its output, since expansion would have the effect of increasing its share of the network costs. The parties may also disagree about the appropriate treatment of the intellectual property that is developed through the venture, for example, whether to maintain it as a trade secret, patent it for internal use, or license it to others.

25. Similar difficulties would arise if the parties were to attempt through contract to permit customers on their respective networks to communicate with one another through the push-to-talk feature. Such integration would provide greater competitive benefits to Sprint, which might make Nextel reluctant to share its technology without significant compensation. If that payment were to involve a per subscriber charge, prices could increase. If it were a lump sum charge, Nextel would have the incentive to overstate the value of its technologies and Sprint would have the incentive to understate Nextel's contributions. If the integration required further investments by Nextel and Sprint, each would prefer a technical solution that gave it a competitive advantage. There is no reason to think that teaming between Sprint and Nextel would be successful or timely in resolving these problems. Consequently, these benefits are merger-specific.

B. Improved Network Coverage

26. The merger will also result in better service quality for Sprint Nextel's wireless customers through a combination of improved signal strength, fewer dropped calls, and greater geographic

coverage. These benefits cannot be achieved as efficiently through either roaming agreements or sharing cell sites. Sprint Nextel will be able to reduce the number of overlapping cell sites while, at the same time, improving the quality of its service.[11]

27. Significantly, in a recent survey of departing Nextel customers, more than [ ] said that they dropped their Nextel service because of network performance and coverage problems.[12] A recent survey of departing Sprint customers obtained a similar result.[13] Because the merger will produce improvements in service, Sprint Nextel will be a stronger competitor. Moreover, expanded geographic coverage will permit Sprint Nextel to avoid some charges that Sprint customers currently incur when they roam into areas where there is no Sprint branded wireless service

28. By permitting the companies to deploy their sites more efficiently by eliminating overlap in their current service areas, the merger will also reduce the cost and improve the quality of service experienced by the subscribers of the combined company. The combined company plans to deploy significantly fewer new cell sites than were planned to be added by Sprint and Nextel in the absence of the merger, in part because a significant number of additional Sprint cell sites can be collocated on existing Nextel sites. This will result in savings in site development and leasing costs as well as operating expenses while improving CDMA network in-building coverage, overcoming weak signal coverage and coverage gaps, and adding capacity. In addition, Sprint and Nextel plan to consolidate a

---

[11] See Joint Declaration of Oliver Valente and Barry West (hereinafter Valente-West Declaration) ¶ 52 for a discussion of this issue.

[12] This is based on the percentage of surveyed ex-customers who said that network performance or coverage problems were their primary reason for terminating Nextel service. (The calculation excludes customers who were terminated by Nextel for non-payment.) The specific reasons given for network performance and coverage problems were: (a) dropped calls; (b) holes or dead spots in the network; (c) in-building coverage; (d) system outages, and (e) need to expand coverage.

[13] Approximately [ ] of exiting Sprint customers who were interviewed in the summer of 2004 cited network issues as one of the main reasons for leaving.

number of currently collocated Sprint sites into existing Nextel base station shelters and towers, thereby achieving additional cost reductions.

29. At the same time, the geographic coverage of the Sprint Nextel CDMA network will be greater than the area that would otherwise have been covered by Sprint's own CDMA network.[14] Instead of duplicating cell sites in the same geographic areas, the merged firm will deploy its CDMA network in areas currently served by Nextel that Sprint would not otherwise have served. The greater coverage and other improvements in service quality likely will reduce subscriber churn, thus reducing the cost incurred by Sprint Nextel in acquiring and retaining subscribers. This will give the merged company the incentive and ability to reduce the prices that it charges.

30. These benefits are merger-specific. Both Sprint and Nextel have attempted to expand their coverage through a combination of cell site sharing and roaming agreements, but these individual efforts are more costly, and produce fewer benefits, than can be achieved through the merger. Cell site sharing can overcome some of the inefficiencies of serving areas with small numbers of subscribers, but it is often logistically difficult and, in any event, it does not produce savings in equipment costs. We also understand that roaming often produces an inconsistent service experience, for example, by preventing subscribers from using certain features to which they have subscribed.[15]

31. Roaming agreements frequently involve substantial expenditures for roaming fees, in large measure because of imbalances in roaming usage among carriers. These costs are either passed on directly to roaming subscribers or included in the costs that carriers must recover from their entire

---

[14] The Commission has previously noted the consumer benefits from expanded network coverage. See, e.g., *Cingular-AT&T Wireless Order* ¶ 217.

[15] We understand that Sprint customers do not experience this degradation when they roam into areas served by Sprint affiliates and Nextel customers do not experience this degradation when they roam into areas served by Nextel Partners.

customer base. After the merger, Sprint Nextel will avoid some of the charges that Sprint currently incurs when its subscribers roam into areas in which it does not have coverage.[16] For example, in areas where Sprint currently pays roaming charges and where the combined firm will deploy its own CDMA network after the merger, these charges will be avoided. Sprint estimates that its per minute cost for a roaming call is more than 7 times its per-minute cost of a non-roaming call.

C. Cost Savings from Increasing the Proportion of "On-Network" Traffic

32. As the Sprint and Nextel networks are combined, the merger will permit Sprint Nextel to avoid some of the interconnection charges that they currently pay to ILECs for completing calls that transit between the separate Sprint and Nextel networks because those calls will now be completed through direct connection. Although Sprint Nextel will incur some incremental costs for this additional on-network traffic, the merger still will produce substantial savings as the proportion of traffic that remains on the Sprint Nextel network increases. Similarly, as the traffic on the two separate networks is combined, direct interconnection with other wireless carriers will (because of the greater combined volume) become economical where it is not today.[17]

33. Sprint has estimated that the per-minute cost of a call from one of its subscribers to someone off its network is approximately 19 percent greater than the per-minute cost of a call between two Sprint PCS subscribers. This gives some indication of the likely cost savings from this source. These cost savings will permit Sprint Nextel to lower the prices that it charges to subscribers and will give it the incentive to do so.

[16] The Commission credited such savings in its Order approving the Cingular-AT&T Wireless transaction. *Cingular-AT&T Wireless Order* ¶ 233. We understand that Sprint customers do not incur these costs when they roam into areas served by Sprint affiliates.

[17] Valente-West Declaration ¶ 22.

D. Reduced Equipment Procurement Costs

34. Nextel customers will benefit from lower handset costs as they migrate to the Sprint Nextel CDMA network. Wireless carriers charge less for handsets than their own procurement costs, and this subsidy represents a significant subscriber acquisition cost. The merger is expected to reduce handset procurement costs. As a result, Sprint Nextel will be able to reduce the prices that it charges to subscribers, either by reducing the price of monthly service, handsets, or both.

35. Motorola currently is Nextel's primary handset supplier.[18] In contrast, Sprint currently has four handset suppliers, which leads to more intensive competition than among the suppliers that serve Nextel.[19] Although Nextel might have been able to obtain some of these benefits if it had developed its own CDMA network, these benefits now will be available sooner for the current Nextel customers who choose the Sprint Nextel CDMA network.

36. In addition, Sprint Nextel will be able to obtain lower equipment costs, for both handsets and network infrastructure, than Sprint or Nextel could have achieved alone because Sprint Nextel will be able to offer larger orders over which suppliers can amortize their research and development costs, and because larger orders result in lower costs through increased supplier experience. As a result, equipment suppliers will have an incentive to offer lower handset and network infrastructure prices to the merged entity than they would to Sprint and Nextel absent the merger. Sprint Nextel subscribers will benefit from these lower costs.

37. These benefits of reduced procurement costs are merger-specific. Although Nextel customers eventually may have benefited from competition among equipment suppliers after Nextel

[18] See Valente-West Declaration ¶ 42.

[19] For an analysis of the effect of multiple supply sources on procurement costs see J.J. Anton and D.A. Yao, "Split Awards, Procurement, and Innovation," *Rand Journal of Economics*, Winter '89, pp. 538-552.

transitioned to CDMA or another next generation network, these benefits will be achieved more quickly as a result of the merger.

38. Finally, the larger equipment orders that will be placed by Sprint Nextel may increase competition among suppliers. This can occur because suppliers will have increased incentives to avoid being "shut out" of any given large long-term procurement. These cost savings from larger equipment orders also are merger-specific.

E. Reduced Backhaul Costs

39. Sprint Nextel customers will also benefit because a substantial proportion of Nextel's backhaul traffic will be carried on Sprint's wireline network after the merger instead of facilities that Nextel currently leases from other carriers. Nextel currently leases landline facilities from other carriers in order to connect its cell sites to its switches and to the facilities of local exchange carriers.[20] In contrast, a substantial portion of Sprint's traffic is carried on its own facilities, including the Metropolitan Area Networks that it maintains. The prices that Nextel pays for this backhaul exceed Sprint's incremental costs. Therefore, the merged firm expects to achieve significant cost savings by moving Nextel traffic to the Sprint network. The cost savings from using Sprint's local backhaul facilities are analogous to gains from eliminating "double marginalization" in a vertical merger.[21] Because these savings will affect the incremental costs incurred to carry current Nextel traffic, they can be expected to reduce the prices charged.

40. These benefits also are merger-specific. Although pricing inefficiencies sometimes can be eliminated in arms-length contracts, perhaps through the use of complex non-linear pricing systems, it often is difficult to do so in practice because usage is difficult to predict accurately. In this regard,

[20] Valente-West Declaration ¶ 20.

[21] That is, Sprint would, in effect, be providing an input to Nextel at marginal cost.

Nextel's current backhaul contracts do not levy a marginal price equal to cost, as evidenced by the cost-savings that the merger would achieve.

F. Improved Development of Services at 2.5 GHz

41. Sprint Nextel will face serious challenges to provide service over 2.5 GHz, including dealing with the propagation characteristics of the spectrum, choosing among still-developing technology options, assembling appropriate blocks of spectrum in the midst of the process of rebanding, designing a service that meets consumer demands, and confronting competition from other new services.[22] Sprint Nextel is more likely to succeed in meeting these challenges than either of the individual firms alone.

42. The geographic footprint of Sprint Nextel's 2.5 GHz rights will be larger than that covered by the rights of either firm alone and will allow 2.5 GHz service by the merged firm to reach more potential subscribers. By sharing development and deployment costs, Sprint Nextel will have greater incentives to undertake the development and deployment of innovative, high-speed multimedia wireless services than would Sprint and Nextel separately.

43. The greater reach of Sprint Nextel service also is likely to result in efficiencies in acquiring network and subscriber equipment. Such efficiencies would permit Sprint Nextel to offer 2.5 GHz services at lower prices than either firm could alone.

44. Finally, nearly nationwide Sprint Nextel service is likely to result in service that consumers find more valuable than service the individual companies could provide over more limited geographic areas, even if there were roaming agreements. Increasing the area served by a unified network will increase the value of service to some consumers if roaming would otherwise reduce the functionality of

[22] For more details, see the Joint Declaration of Todd Rowley and Robert Finch (hereinafter Rowley-Finch Declaration).

service. The larger network will also reduce the roaming charges paid by Sprint Nextel. In addition, because the Sprint Nextel network for 2.5 GHz service will be larger, suppliers of complementary services – e.g., applications suppliers – are likely to find it more attractive to supply Sprint Nextel than it would be to supply either of the merging parties. These factors will increase both the range and quality of the services that the merged entity will be able to offer to its subscribers and to reduce the cost of offering them.

45. It is unlikely the two companies could achieve similar efficiencies without merging. Sprint and Nextel previously discussed a joint venture to pool the BRS spectrum holdings of the two companies. However, the venture was never formed.[23] Both companies apparently were concerned about the governance of the venture, including how contract disputes would be resolved and how incentives for efficient behavior would be maintained as new information became available. In addition, differences in the wireless networks that the two companies would continue to maintain separately led to differences in their incentives with respect to the joint venture. Finally, both firms apparently were concerned about the effect of possible future material changes in the status of its partner on the viability of the joint venture.

46. These barriers to teaming are the types of transactions costs discussed earlier and provide a concrete example of the types of difficulties that cooperation short of merger entails. The merger of Sprint and Nextel will overcome these difficulties while, at the same time, achieving the benefits that the parties hoped to receive from the joint venture.

[23] For more details, see the Rowley-Finch Declaration.

III. Structural Screens for Competitive Effects Analysis

47. In this section, we define the relevant antitrust markets for evaluating this transaction. We then conduct an initial structural evaluation of the merger, similar to the one that the Commission performed in its review of the Cingular-AT&T Wireless transaction. We adjust the levels used in the Commission's structural screens to take into account a number of key structural differences between the Sprint-Nextel merger and the Cingular-AT&T Wireless combination, particularly the fact that Sprint and Nextel are not major ILECs. What these differences mean is that the Sprint-Nextel merger raises fewer competitive risks than did the Cingular-AT&T Wireless merger and, consequently, that the initial structural screens used by the Commission in Cingular-AT&T Wireless should be relaxed somewhat to account for these lower risks. In subsequent sections, we follow the approach used by the Commission in evaluating the Cingular-AT&T Wireless transaction by examining in greater depth those markets that are identified by the initial screens as requiring further competitive analysis.

A. The Relevant Product Market

48. In its *Cingular-AT&T Wireless Order*, the Commission concluded that the relevant wireless product market includes all mobile wireless services, both interconnected voice and data. In this Declaration, we follow the Commission and adopt this market definition. The Commission also concluded that, although there may be separate antitrust markets for enterprise (i.e., business, government, institutions) customers and residential (non-enterprise) customers, "enterprise customers tend to be high-volume users of mobile voice services {and} competition among carriers to attract and retain enterprise customers is likely to be relatively intense."[24] For this reason, the Commission concluded that the evaluation of a market that combined services to these two sets of customers would not result in any understatement of possible competitive harm to the market for enterprise services. In

[24] *Cingular-AT&T Wireless Order* ¶ 79.

this Declaration, we follow the Commission's approach of combining enterprise and residential service into a single market.

B. Competition in the Supply of Wholesale Wireless Services

49. One also might wish to consider whether to treat wholesale services, (i.e., the sale of wireless mobile services to entities that retail those services to final consumers) and retail services as separate markets. A number of suppliers purchase wholesale wireless services from Sprint and other carriers and then resell them to final consumers. Sprint's wholesale customers include Virgin Mobile and Qwest. Under these arrangements, network and feature functionality are provided by Sprint and the wholesale customer generally provides all other services (e.g., branding/marketing, billing, and customer care). We understand that final customers regard the retail sellers (i.e., wholesale purchasers) as their suppliers.

50. Some Sprint wholesale customers purchase minutes of use and data packets, often with a volume discount, and create and price their own retail packages. Others purchase pre-packaged bundles of voice and data at wholesale prices, which include a monthly recurring charge and a charge for "overage" (i.e., minutes that exceed the maximum in the package). Some wholesale customers operate nationally and attempt to serve all types of customers, while others operate in regional, demographic, or other market niches. For example, Qwest generally operates in its ILEC territory, and Virgin Mobile seeks young users who use pre-paid service.

51. It is our understanding that Sprint, Cingular, and Verizon Wireless together provide service to about 95 percent of all subscribers who are served through a wholesale intermediary, and that competition among these carriers is vigorous. We also understand that Nextel is not a supplier of wholesale services. Thus, the merger of Sprint and Nextel will not increase concentration among existing suppliers of wholesale wireless services. Although, in principle, Nextel could become a

supplier to wholesale customers at some point in the future, so could T-Mobile. Thus, even if Nextel were eliminated as a potential entrant, another potential entrant has sufficient capacity to absorb a large number of end users who are served through wholesale intermediaries.

52. Moreover, our analysis of competition indicates that other carriers generally have sufficient capacity to absorb not only those Sprint Nextel retail customers who would wish to switch carriers in response to a post-merger price increase, but also those customers whom Sprint currently serves through its wholesale customers. In fact, in calculating market shares, we conservatively have assigned to Sprint those retail customers whom Sprint indirectly serves through its wholesale customers.

53. In addition, some wholesale customers purchase the underlying service for a lump sum or fixed unit price under long-term contracts. A post-merger increase in retail prices would lead such wholesale customers to expand their retail output in response. These wholesale customers, who independently set their own retail prices, thus act as independent constraints on retail pricing by the underlying carriers.

54. Finally, the presence of retail competition constrains the prices that can be charged at wholesale. Because the merger of Sprint and Nextel will not harm retail wireless competition, it also will not harm wholesale competition.[25]

[25] It might be argued that, post-merger, the combined firm would have a heightened incentive to restrict sales to wholesale customers that compete downstream with the combined firm. However, if the merged firm lacks the ability to raise downstream prices even if it were to acquire all of the wholesale customers' subscribers, and if there is competition in the provision of wholesale services, then the merged firm would have no incentive to restrict those sales. Thus, for the same reasons that the merger is unlikely to produce higher wholesale prices as a result of reduced competition among wholesale suppliers, this type of vertical foreclosure is also unlikely.